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COURT-OF-APPEALS
DIVISION I
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STATE OF WASHINGTON

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RECORDED

Statement of
Additional
Grounds

Vernal G. Garney 

The Appellant has been denied his constitutional rights by and through the color of state law. The 5th Amendment in the Bill of Rights reads "No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury." This inherent right is secured to every United States citizen, regardless of the type of court, by the 14th Amendment of our US Constitution.

The State of Washington, through Art I, § 2 of its own constitution, agrees that "The Constitution of the United States is the supreme law of the land," yet the State directly abridges it in Art I, § 26; "No grand jury shall be drawn or summoned in any county, except the superior judge thereof so shall order." There is no provision in the US Constitution that gives the State the power to deprive its citizens of this right, in fact, it clearly states the opposite. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Therefore, this is a violation of Constitutional dimension under the color of state law.

The typical defense utilized by the State to this argument is to utilize the case *Hurtado v California*, 110 US 516, 28 L Ed 232, 4 S Ct 111 (1884). Appellant now explains why that argument is not only outdated, but why it is in err. The question the Supreme Court answered in 1884 was whether or not that the Grand Jury Clause of the 5th Amendment was an incorporated right secured against the states by the 14th Amendment's Due Process Clause. The Court held then that the Grand Jury Clause was not a right protected against

the intrusion of the state under the 14th Amendment's Due Process Clause. It was a ruling with significant application found under such a narrowly scoped question.

This ruling should be looked at in the light of the times. In 1885, during President Grover Cleveland's State of the Union Address, he made a statement that would not be acceptable today. "Since the people upholding polyamy in our Territories are reinforced by immigration from other lands, I recommend that a law be passed to prevent the importation of Mormons into the country." Only eleven years later, the same Supreme Court ruled on *Plessy v Ferguson*, 163 US 537, 41 L Ed 256, 16 SCt 1138, 1896, which enacted the Jim Crowe laws. These are black eyes on our nation and why this appellant urges the court to recognize the implication of continuing to follow *Hurtado*.

To ease the court's mind, the US Supreme Court has had plenty to say regarding the rights found in the Bill of Rights. Since *Barron v Baltimore* (1833), 32 US 243, 8 L Ed 672, states have argued that the Bill of Rights does not apply to them, only to the Federal government. Since the Bill of Rights is "Part" of the Constitution and state judges are bound to protect and enforce "any Thing" in the Constitution (see Art VI of the US Constitution) and Article IV § 28 of the State of Washington's constitution), even if a state law directs something to the contrary, the Grand Jury clause has legal effect against infringement by the states, due to its codification within the Constitution's text. See *Timbs v Indiana* (2019), 203 L Ed 2d 11, 139 SCt 682, which clearly overrules the concept of *Barron* and all of its progeny, including *Hurtado*, as the Supreme Court unanimously

assented via three opinions; by Justices Ginsberg, Gorsuch, and Thomas. "The rights identified in the Bill of Rights are inalienable rights of all men, given their legal effect by their codification in the Constitution's text from interference by the states. The privileges or immunities of citizens of the United States include, at a minimum, the individual rights enumerated in the Bill of Rights. There is no daylight between federal and state conduct." The Bill of Rights guarantees are "enforceable against the states under the 14th Amendment according to the same standards that protect those personal rights against federal encroachment."

In this light, it is only acceptable that this court, bound by its Oath of Duty, acknowledge these deprivation of rights and, since everything that happened after this deprivation of an inalienable right becomes tainted fruit of a poisonous tree, the court's only correct action is to reverse the trial court's conviction and grant Appellant's immediate release.

Respectfully,
Vernal G. Garvey III
Vernal G. Garvey III
Appellant